

§ 48.4218-1

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shall be the lesser of the following amounts:

(1) The difference between (i) the total tax, and (ii) the aggregate tax applicable to lease payments already received; or

(2) A tax computed, at the rate in effect on the date of the sale, on the price for which the article is sold.

For purposes of subparagraph (2) of this paragraph, the provisions of section 4216(b) for determining a constructive sale price shall not apply if the sale is at arm's length. If the sale is not at arm's length, the tax referred to in subparagraph (2) of this paragraph shall be computed on a constructive sale price as provided in § 48.4216(b)-2.

(g) *Sale of article after total tax has become payable.* If the lessor sells an article after the total tax has become payable, the tax imposed under Chapter 32 of the Code shall not apply to such sale.

(h) *Special rules applicable to certain leases entered into before January 1, 1959.* For purposes of this section, in the case of any lease entered into before, and existing on, January 1, 1959:

(1) Such lease shall be considered to have been entered into on January 1, 1959.

(2) The total tax shall be computed on the fair market value of the article on January 1, 1959.

(3) The lease payments under such lease shall include only payments attributable to periods beginning after December 31, 1958.

(i) *Cross-reference.* In the case of the lease of an automobile the sale of which by the manufacturer would be taxable under section 4064, the foregoing provisions of this section shall not apply. See section 4217 (e) for the rules relating to the payment of the gas guzzler tax.

[T.D. 7536, 43 FR 13521, Mar. 31, 1978, as amended by T.D. 8036, 50 FR 29963, July 23, 1985]

**USE BY MANUFACTURER OR IMPORTER
CONSIDERED SALE**

§ 48.4218-1 Tax on use by manufacturer, producer, or importer.

(a) *In general.* Section 4218 imposes tax in respect of certain uses of articles by the actual manufacturer, producer,

or importer thereof. This section also applies in respect of the use of articles by any other person who, pursuant to a provision of Chapter 32 of the Code, is considered to be, or is treated as, the manufacturer or producer of the articles. See, for example, section 4223 relating to articles purchased tax free for use in further manufacture.

(b) *Taxable articles in general—(1) Application of tax.* If the manufacturer, producer, or importer of an article taxable under Chapter 32 of the Code (other than an article referred to in paragraph (a), (d), or (e) of this section) uses the article for any purpose other than that indicated in subparagraph (3) or (4) of this paragraph, he shall be liable for tax with respect to the use of such article in the same manner as if the article were sold by him.

(2) *Taxable use in manufacture of nontaxable articles—(i) In general.* In the case of an article to which subparagraph (1) of this paragraph applies, tax attaches when the manufacturer, producer, or importer of the article uses it as material in the manufacture or production of, or as a component part of, another article which is not taxable under Chapter 32 of the Code, regardless of the disposition made of such other article. (See paragraph (c) of § 48.4218-5 for computation of tax on such use.)

(ii) *Types of use in manufacture of nontaxable articles.* Taxable use may consist of the incorporation of a taxable article, such as an electric light bulb, into a nontaxable article, such as a flashlight. Taxable use may also result from the combining of a taxable article (or the components thereof) with a nontaxable article (or the components of a nontaxable article) resulting in a combination end article which itself is not taxable. Although the taxable article may not be a completely separable unit, within the contemplation of the law a taxable article has been produced and incorporated in the combination end article. The following are examples of taxable articles so used:

(a) Household type electric or gas clothes drier incorporated in a combination washer-drier.

(b) Household type electric, gas, or oil cooking range combined either with

a range using other means of heating or with a nontaxable space heater.

(c) Taxable radio receiving set incorporated in a combination radio receiver-transmitter or in a combination radio receiver-intercommunication system.

If an automobile part or accessory, radio or television component, or camera lens is used as material in the manufacture or production of, or as a component part of, a taxable article to which subparagraph (1) of this paragraph has application and such article in turn is used in the manufacture or production of, or as a component part of, a nontaxable article, the part or accessory, component, or lens is considered to have been used in the manufacture of the taxable article, and not in the manufacture of the nontaxable article. For example, the use of taxable radio components in the production of a taxable radio receiving set is exempt from tax (see paragraph (d) of this section), but the use of the radio receiving set in the production of a nontaxable combination radio receiver-transmitter is subject to tax. See section 6416(b)(2) or 6416(b)(3) and the regulations thereunder contained in Subpart O for credit or refund of tax paid in respect of such radio receiver if the combination radio receiver-transmitter is by any person exported, sold to a State or local government for its exclusive use, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft.

(3) *Nontaxable use in manufacture of taxable articles.* The tax on the use of an article to which subparagraph (1) of this paragraph has application shall not apply if the article is used by the manufacturer, producer, or importer thereof as material in the manufacture or production of, or as a component part of, another article taxable under Chapter 32 to be manufactured or produced by him. It is immaterial what disposition is made of such other article.

(4) *Gasoline.* The tax on the use of an article shall not apply in the case of gasoline used on or after October 1, 1961, by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him. See

section 4221 and the regulations thereunder contained in Subpart N. For provisions applicable to use of gasoline by a producer or importer otherwise than in the production of other gasoline, or special motor fuel taxable under section 4041(b), see section 4082(c) and paragraph (c) of § 48.4082-1 contained in subpart H.

(c) *Tires, inner tubes, and automobile radio or television receiving sets.* If the manufacturer, producer, or importer of a tire or inner tube taxable under section 4071 (other than a bicycle tire or inner tube referred to in paragraph (e) of this section), or an automobile radio or television receiving set taxable under section 4141, sells such article on or in connection with the sale of any other article or uses it for any purpose, he shall be liable for tax with respect to such tire, inner tube, or radio or television receiving set in the same manner as if it were sold by him as a separate article. However, tax does not apply where the manufacturer, producer, or importer of the tire, inner tube, or automobile radio or television receiving set sells such article on or in connection with the sale of another article manufactured by him for any of the exempt purposes specified in paragraphs (2) to (5), inclusive, of section 4221(a) and the regulations thereunder contained in Subpart N.

(d) *Automobile parts or accessories, radio or television components, and camera lenses—(1) Application of tax.* If the manufacturer, producer, or importer of an automobile part or accessory taxable under section 4061(b), a radio or television component taxable under section 4141, or a camera lens taxable under section 4171, uses the article for any purpose other than that indicated in subparagraph (2) of this paragraph, he shall be liable for tax with respect to the use of the article in the same manner as if the article were sold by him. For example, tax applies if the manufacturer, producer, or importer uses the article referred to in this subparagraph for repair or replacement purposes in connection with equipment used by him in the operation of his business.

(2) *Nontaxable use in manufacture of other articles.* The tax on the use of an article referred to in subparagraph (1)

of this paragraph shall not apply if the article is used by the manufacturer, producer, or importer thereof as material in the manufacture or production of, or as a component part of, any other article (whether or not taxable under Chapter 32) to be manufactured or produced by him. It is immaterial what disposition is made of such other article.

(e) *Bicycle tires and inner tubes*—(1) *Application of tax.* If the manufacturer, producer, or importer of a bicycle tire as defined in section 4221(e)(4)(B) or an inner tube for such a tire uses the tire or inner tube for any purpose other than as indicated in subparagraph (2) of this paragraph, he shall be liable for tax with respect to the use of the tire or inner tube in the same manner as if the article were sold by him.

(2) *Nontaxable use in manufacture of other articles.* The tax on the use of a bicycle tire or inner tube referred to in subparagraph (1) of this paragraph shall not apply if the tire or inner tube is used by the manufacturer, producer, or importer thereof as material in the manufacture or production of, or as a component part of, a new bicycle to be manufactured or produced by him. It is immaterial what disposition is made of the new bicycle. Tax, however, applies in the case of the use of a bicycle tire or inner tube by the manufacturer, producer, or importer thereof in the rebuilding or reconditioning of a used bicycle.

(3) *Effective date.* The provisions of this paragraph shall apply to the use on or after May 1, 1960, of a bicycle tire or inner tube by the manufacturer, producer, or importer thereof. Liability for tax on the use prior to that date of a bicycle tire or inner tube by the manufacturer, producer, or importer thereof shall be based on the provisions of paragraph (c) of this section which apply to tires and inner tubes in general.

(f) *Use after lease.* If the manufacturer, producer, or importer of a taxable article leases such article and thereafter uses the article, he incurs liability for tax on such use as provided in these regulations to the same extent as if the article were sold after being leased. See section 4217 and the regulations thereunder in this subpart for ap-

plication and computation of tax in case of leased articles.

(g) *Time of application of tax.* In the case of a taxable use of an article by the manufacturer, producer, or importer thereof, the tax attaches at the time such use begins. If tax applies by reason of the sale of an article by the manufacturer, producer, or importer thereof on or in connection with his sale of another article, the tax attaches at the time of the sale of such other article.

(h) *Exemptions because of other statutory provisions.* Tax does not apply on the use of an article by the manufacturer, producer, or importer thereof if under the applicable provisions of the Code the sale of the article for a similar use would not be subject to tax. For example, the use of gasoline by the producer thereof to propel tankers engaged in foreign trade which are owned or leased by the producer would not be subject to tax under section 4218 since a sale for such use would be exempt from tax as provided in section 4221(a)(3). Also, tax need not be paid with respect to the use of an article by the manufacturer, producer, or importer thereof if such use would qualify, under the provisions of section 6416(b), for credit or refund of the tax paid.

[T.D. 6687, 28 FR 11780, Nov. 5, 1963]

§ 48.4218-2 Business or personal use of articles.

(a) *Business use.* Section 4218 applies to the use by a person, in the operation of any business in which he is engaged, of a taxable article which has been manufactured, produced, or imported by him or his agent. For example, a person engaged in the operation of a dairy business incurs liability for tax with respect to a truck body manufactured by him and used in the operation of his dairy business.

(b) *Personal use.* The tax on use of a taxable article does not attach in cases where an individual incidentally manufactures, produces, or imports a taxable article for his personal use or causes a taxable article to be manufactured, produced, or imported for his personal use.

[T.D. 6687, 28 FR 11781, Nov. 5, 1963]